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July 31, 1987

Jesse A. Coles, Jr., Ph.D., Executive Director  
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Dear Dr. Coles:

By your recent letter, you indicated that the Department of Highways and Public Transportation Commission recently voted to increase the salaries of the Chief Highway Commissioner, the Secretary-Treasurer, and the State Highway Engineer effective July 1, 1987. Expressing your concern about the Commission's authority to effect such salary actions without approval of the Agency Head Salary Commission and the Budget and Control Board, you have requested an opinion "as to which statute, regulation, and/or legislative proviso takes precedence in pay issues for the Department of Highways and Public Transportation's Chief Highway Commissioner, Secretary-Treasurer and the State Highway Engineer." I understand that the Chief Highway Commissioner is not reviewed by the Agency Head Salary Commission; however, the Secretary-Treasurer and State Highway Engineer are included in the Executive Compensation System. In addition, all three are unclassified positions.

Your request hinges upon the statutory construction of certain provisions of article 3, of Title 57 [State Highway Commission], certain provisions of article 3, of Title 8 [Personnel Administration], and certain provisions of the 1987-88 appropriations act, 1987 S.C. Acts 170, of the Code of Laws of South Carolina, 1976, as amended. The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. See, e.g., Garriss v. Cincinnati Ins.,

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Co., 280 S.C. 149, 311 S.E.2d 723 (1984); Citizens and Southern Systems, Inc. v. South Carolina Tax Comm'n, 280 S.C. 138, 311 S.E.2d 717 (1984); Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980).

When interpreting a statute, the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983). In construing a statute, words must be given their plain and ordinary meaning, without resort to subtle or forced construction for the purpose limiting or expanding its operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. South Carolina Tax Comm'n, 273 S.C. 269, 255 S.E.2d 837 (1979).

The legislative intent must be gathered from a reading of the statute as a whole in light of the circumstances and conditions existing at the time of its enactment, and, therefore, where the statutory language gives rise to doubt or uncertainty as to the legislative intent, the search for such intent may range beyond the borders of the statute itself. Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956).

Later legislation takes precedence over earlier laws on the same subject. Duke Power Co. v. South Carolina Pub. Serv. Comm'n, 284 S.C. 81, 326 S.E.2d 395 (1985). Statutes in apparent conflict which address similar subject matter must be read together and reconciled if possible so as to give meaning to each and to avoid an absurd result. Powell v. Red Carpet Lounge, 280 S.C. 142, 311 S.E.2d 719 (1984).

S.C. Code Ann. §57-3-410 (1976)<sup>1</sup> provides:

The Chief Highway Commissioner shall be appointed by the State Highway Commission to serve for a four-year term. A person

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<sup>1</sup>Pursuant to 1986 S.C. Acts 383 §2, references to the Executive Director of the Department of Highways and Public Transportation are substituted for references to the Chief Commissioner of the Department of Highways and Public Transportation.

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appointed to this position shall be a citizen of practical and successful business and executive ability. His compensation shall be fixed by the Commission. The right to remove or discharge a person holding the position of Chief Highway Commissioner shall be reserved to the Commission. [Emphasis added.]

Similarly, S. C. Code Ann. §57-3-450 (1976) provides:

There shall be a Secretary-Treasurer of the Department. The Secretary-Treasurer shall be the fiscal officer of the Department, who shall, in addition to his duties as a fiscal officer, record the proceedings of the Commission. The Secretary-Treasurer shall be appointed by the Commission to serve in office at the pleasure of the Commission. His compensation shall be fixed by the Commission. [Emphasis added.]

In addition, S. C. Code Ann. §57-3-470 (1976) provides, in relevant part:

There shall be a State Highway Engineer. The State Highway Engineer shall be the administrative head of the engineering division and, as such, shall direct the highway engineering division. The Engineer shall be appointed by the Commission to serve in office at the pleasure of the Commission. His compensation shall be fixed by the Commission.... [Emphasis added.]

The emphasized portions of these three statutes have been included in legislation concerning the State Highway Commission since at least 1951. See 1951 S.C. Acts 329; S.C. Code Ann. §§33-51, 33-55, 33-57 (1952); S.C. Code Ann. §§33-51, 33-55, 33-57 (1962). Also, the appropriations acts for fiscal years 1978-79 through 1984-85 contained the following proviso:

Provided, Further, That the compensation of the Chief Highway Commissioner, the Secretary-Treasurer and the State Highway Engineer shall be paid in accordance with the provisions of Section 57-3-410, 57-3-450 and 57-3-470 of the Code of Laws, 1976.

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1978 S.C. Acts, 644 §122; 1979 S.C. Acts 199 §121; 1980 S.C. Acts 517 §157; 1981 S.C. Acts 178 §121; 1982 S.C. Acts 466 §122; 1983 S.C. Acts 151 §121; 1984 S.C. Acts 512 §119. Significantly, this proviso did not appear in the 1985-86 appropriations act, 1985 S.C. Acts 201, or the 1986-87 appropriations act, 1986 S.C. Acts 540, or the 1987-88 appropriations act, 1987 S.C. Acts 170.

In 1975, the General Assembly created the State Personnel Division (now known as the Division of Human Resource Management) under the State Budget and Control Board "to administer a comprehensive system of personnel administration responsive to the needs of the employees and agencies and essential to the efficient operation of State Government. It shall be applicable to all State agencies, departments, institutions, boards, commissions, and authorities, except as may...be exempted."<sup>2</sup> S.C. Code Ann. §8-11-210 (1976). S.C. Code Ann. §8-11-230 (1976) provides, in relevant part:

The Budget and Control Board is authorized and directed to:

1. Establish procedures for the regulation of compensation of all State employees where not otherwise regulated directly by the General Assembly. Such procedures and regulations shall distinguish between two categories of positions, classified and unclassified. A uniform Classification and Compensation Plan shall be provided for such regulation of all positions in the classified service. Such additional procedures shall be provided as in its judgment adequately and equitably regulate unclassified positions.

. . . . .

The 1983-84 appropriations act contained the following two provisos:

Provided, Further, That it is the intent of the General Assembly that the Personnel Division of the Budget and Control Board

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<sup>2</sup>Exemptions are found in S.C. Code Ann. §§8-11-260 and -270 (1976); however, none appears applicable here.

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shall conduct a salary and fringe benefit survey for agency heads during Fiscal Year 1983-84 and report its findings to the Budget and Control Board and General Assembly by August 1, 1984.

Provided, Further, That it is the intent of the General Assembly that a salary and fringe benefit survey for agency heads shall be conducted by the Personnel Division of the Budget and Control Board every three (3) years.

1983 S.C. Acts 151 §14. Subsequently, the 1984-85 appropriations act contained this proviso:

Provided, Further, That the General Assembly directs the Budget and Control Board to continue to carry out the recommendations for the Hay Report in succeeding years. Provided, Further, That each agency head's salary for FY salary except for those agency heads whose salaries have been adjusted, through legislative action, in an amount greater than or less than 7%. Provided, Further, That the General Assembly directs that a mandatory performance appraisal for agency heads be initiated and training conducted for members of Boards and Commissions. All boards and commissions will be required to submit justification of an agency head's performance and salary recommendations to the Executive Salary and Performance Evaluation Commission. This commission shall consist of three appointees of the Chairman of the House Ways and Means, three appointees of Senate Finance Committee, and two appointees of the Governor with experience in executive compensation. Provided, Further, That salary increases for agency heads for FY 1985-86 shall be based on recommendations by each agency board or commission to the Executive Salary and Performance Evaluation Commission and their recommendations to the General Assembly. Provided, Further, That no deputy agency head shall receive in excess of 99% of the agency head salary, except upon approval of the Budget and Control Board. Provided, Further, That these provisions shall not apply to agencies headed by a constitutional officer.

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1984 S.C. Acts 512 §14. The 1985-86 appropriations act contained this proviso:

Provided, Further, That effective July 1, 1985, the Budget and Control Board shall implement an Executive Compensation System for the regulation of compensation of all state executive legal positions so designated by the Division of Human Resource Management and as recommended by the Executive Salary and Performance Evaluation Commission Study of Executive Compensation and where not otherwise regulated directly by the General Assembly. All employees included in the Executive Compensation System shall hold unclassified status and for the distribution of funds appropriated and designated as merit increments shall have an effective merit review date of January 1 of the fiscal year. The Division of Human Resource Management is responsible for the identification and evaluation of executive level positions. Additional procedures and regulations must be provided by the Budget and Control Board as in its judgement [sic] adequately and equitably regulate Executive Compensation System positions.

1985 S.C. Acts 201 §16.

Part I of the 1987-88 appropriations act, 1987 S.C. Acts 170 §16, contains the following relevant provisos concerning<sup>3</sup> compensation of State employees for fiscal year 1987-88:

16.35. The Budget and Control Board shall develop a plan for the distribution of the funds appropriated in SECTION 16L and designated as base pay increase.

16.36. Base pay increase shall not be awarded to employees in amounts having the effect of raising base salaries above the new adjusted maximum of their pay ranges.

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<sup>3</sup>These provisos will be denominated in this letter by the subsection numbers designated in this list for each proviso.

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16.37. Longevity payments shall not be considered a part of the base salary of the employee for the purpose of awarding a base pay increase.

16.38. The amounts appropriated to the Budget and Control Board for Base Pay and Merit Increases must be allocated by the Board to various state agencies to provide pay increases for employees in accordance with the following plan:

A. Effective on the first pay date which occurs on or after July 1, 1987, the compensation of unclassified employees and classified employees shall be increased by 2.0% unless otherwise prohibited or allowed by Paragraph B of this proviso.

B. Effective on the first pay date which occurs on or after October 1, 1987, with respect to unclassified executive compensation system and unclassified academic employees, each agency is authorized to allot the total funds for compensation increases for its employees in these groups among individual employees without uniformity. All of the salaries are subject to the provisions of Section 129.10 of Part I of this Act and that specific Budget and Control Board approval must be obtained before any employees subject to the provisions of this paragraph may be granted an annual pay raise in excess of 5.0%. The funds provided for compensation increases for any employees subject to the provisions of this paragraph are based on an average annual 2.5% increase. Any employees subject to the provision of this paragraph shall not be eligible for the compensation increases provided in Paragraphs A and C.

C. The Budget and Control Board shall develop a plan for the distribution of funds appropriated in Section 16L and designated as merit increments so as to provide funds for an average 1% merit increment increase for classified and unclassified employees. All

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classified employees including those at or above the maximum salary for their grade shall be eligible to receive merit increases under the plan adopted by the Budget and Control Board. For the purpose of computing the allocation of merit increment funds to the various agencies and institutions, it is assumed that the average merit review date for both classified and unclassified employees shall be January 1, 1988.

16.39. It is the intent of the General Assembly that a salary and fringe benefit survey for agency heads shall be conducted by the Human Resource Management Division of the Budget & Control Board every three years.

16.40 Appropriated funds may be used for compensation increases for classified and unclassified employees and agency heads only in the same ratio that the employee's base salary is paid from appropriated sources.

16.41. Statewide elected officials, constitutional officers, temporary positions, whether full or part-time, and agency heads, shall not be eligible for any compensation increases as provided in this Act unless otherwise specified in this Act.

16.42. No employee shall receive in excess of 96% of the midpoint of the agency head salary range, except upon approval of the Budget and Control Board. This proviso shall not apply to agencies headed by a constitutional officer.

16.46. Salary increases to agency heads may not have the effect of raising salaries above the maximum of their pay ranges.

16.47A. <sup>4</sup>The Agency Head Salary Commission shall recommend to the Budget and

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<sup>4</sup>The Agency Head Salary Commission was formerly known as the Executive Salary and Performance Evaluation Commission. See S.C. Code Ann. §8-11-160 (1976).

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Control Board, by October 1, 1987, salary increases for agency heads with the exception of the Executive Director of the State Board for Technical and Comprehensive Education, the Administrator of the Department of Consumer Affairs, and the Director of the Department of Archives and History, reviewed by that Commission. Pay increases shall range from zero percent to five percent. No agency head will be paid less than the minimum of the pay range nor receive an increase having the effect of raising the salary above the maximum of the range. Any increases recommended by the Agency Head Salary Commission must be funded out of the individual agency's budget. The effective date of salary increases is the first pay date on or after October 1, 1987.

16.47B. With the exception of the Director of the Division of Local Government, agency chief executive officers not reviewed by the Agency Head Salary Commission shall receive an annual increase of 2.5% effective on the first pay date which occurs on or after July 1, 1987, unless otherwise provided in this Act. Such increases will be funded out of the individual agency's budget. The Budget and Control Board shall transfer the amount, as necessary, for such increases.

16.56. Effective July 1, 1985, the Budget and Control Board shall implement an Executive Compensation System for the regulation of compensation of all state executive level positions so designated by the Division of Human Resource Management and as recommended by the Executive Salary and Performance Evaluation Commission Study of Executive Compensation and where not otherwise regulated directly by the General Assembly. All employees included in the Executive Compensation System shall hold unclassified status. The Division of Human Resource Management is responsible for this identification and evaluation of executive level positions. Additional procedures and

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regulations must be provided by the Budget and Control Board as in its judgement [sic] adequately and equitably regulate Executive Compensation System positions.

16.94. Any supplement from a public or private source to the salary appropriated for a state employee and fixed by the State must be reported by the employee to the Division of Human Resource Management of the State Budget and Control Board. The report must include the amount, source, and any condition of the supplement. Any change in the amount, source, or condition must be reported to the division by the employee. [Emphasis added.]

Section 129.10 of Part I of the 1987-88 appropriations act also provides, in relevant part:

All salaries paid by departments and institutions shall be in accord with a uniform classification and compensation plan, approved by the Budget and Control Board, applicable to all personnel of the State Government whose compensation is not specifically fixed in this act. Such plan shall include all employees regardless of the source of funds from which payment for personal service is drawn. Academic personnel of the institutions of higher learning and other individual or group of positions that cannot practically be covered by the plan may be excluded therefrom but their compensations shall, nevertheless, be subject to approval by the Budget and Control Board. Salary appropriations for employees fixed in this Act shall be in full for all services rendered, and no supplements from other sources shall be permitted or approved by the State Budget and Control Board. With the exception of travel and subsistence, legislative study committees shall not compensate any person who is otherwise employed as a full-time state employee. Salaries of the heads of all agencies of the State Government shall be specifically fixed in this Act and no salary shall be paid any

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agency head whose salary is not so fixed.  
The source of compensation for any position  
in the State Government shall not be changed  
without approval of the Budget and Control  
Board. [Emphasis added.]

1987 S.C. Acts 170 §129.10.

Since approximately 1975, the General Assembly seems to have attempted through its legislation to provide a comprehensive and uniform system of personnel administration in South Carolina. In light of this legislative trend, the emphasized language of §129.10 of the 1987-88 appropriations act, quoted above, is significant. Moreover, the 1987-88 appropriations act also provides, in relevant part:

All Acts or parts of Acts inconsistent with  
any of the provisions of Part I of this Act  
are hereby suspended for the Fiscal Year  
1987-88.

1987 S.C. Acts 170 Part II. Cf., Atty. Gen. Op., Aug. 24, 1976.

Consequently, the later legislation concerning personnel administration, as well as the relevant provisos of the 1987-88 appropriations act, would probably take precedence over earlier laws including §§57-3-410, -450, and -470 on the subject of the compensation of the Department of Highways and Public Transportation's Chief Highway Commissioner (or Executive Director), Secretary-Treasurer, and State Highway Engineer. See Duke Power Co. v. South Carolina Pub. Serv. Comm'n, supra.

Please note that an argument could be made that the relevant provisos of the 1987-88 appropriations act could be read in pari materia with §§57-3-410, -450, and -470 to give meaning to each. This argument, however, seems strained because the all-inclusive language of 1987 S.C. Acts 170 §129.10 would be rendered meaningless and produce an absurd result. See Powell v. Red Carpet Lounge, supra. See also 1987 S.C. Acts 170 Part II (language quoted above).

In addition, S.C. Code Ann. §8-11-160 (1976) provides:

All boards and commissions are required to submit justification of an agency head's performance and salary recommendations to the Executive Salary and Performance Evaluation Commission. This Commission consists of four

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appointees of the chairman of the House Ways and Means Committee, four appointees of the Senate Finance Committee, and three appointees of the Governor with experience in executive compensation.

Salary increases for agency heads must be based on recommendations by each agency board or commission to the Executive Salary and Performance Evaluation Commission and their recommendations to the General Assembly.

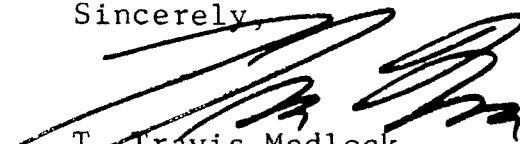
This section, which was enacted in 1985, provides a method by which agency boards and commissions have input in recommending salary increases for agency heads.

#### CONCLUSION

In response to your request concerning the Department of Highways and Public Transportation Commission's recently voted salary increases for the Chief Highway Commissioner, the Secretary-Treasurer, and the State Highway Engineer effective July 1, 1987, later legislation concerning personnel administration in South Carolina, as well as certain relevant provisos of the 1987-88 appropriations act, probably take precedence over S.C. Code Ann. §57-3-410, -450, and -470 concerning compensation of the Chief Highway Commissioner (or Executive Director), Secretary-Treasurer, and State Highway Engineer of the South Carolina Department of Highways and Public Transportation.

If I can answer any further questions concerning this matter, please contact me.

Sincerely,



T. Travis Medlock  
Attorney General

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